

Montana Water Court  
PO Box 1389  
Bozeman, MT 59771-1389  
1-800-624-3270  
(406) 586-4364  
watercourt@mt.gov

MONTANA WATER COURT, YELLOWSTONE DIVISION  
YELLOWSTONE RIVER ABOVE AND INCLUDING BRIDGER CREEK BASIN  
BASIN 43B  
PRELIMINARY DECREE

\*\*\*\*\*

CLAIMANTS: Frederick W. Amborn III; Mary K. Amborn;  
Bernadine L. Gerfen

**CASE 43B-0777-R-2022**  
43B 30115925

**NOTICE OF FILING OF MASTER'S REPORT**

This Master's Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusion of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days to be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must mail a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

**MASTER'S REPORT**

This claim appeared in the Preliminary Decree with the following issue remark:

NO VOLUME HAS BEEN CLAIMED. THE VOLUME GUIDELINE FOR THIS PURPOSE IS 14 ACREFEET PER YEAR.

This remark was not addressed through the objection process. The Water Court is required to resolve the issue raised by an issue remark. Section 85-2-248, MCA. Under Section 85-2-248(3), MCA, information in the claim file or other information obtained by the Court can be reviewed to determine if it provides a sufficient basis to resolve the issue raised by a remark and the Court can provide the claimants an opportunity to file additional information or evidence.

On November 29, 2022 the Order Consolidating Case And Setting Filing Deadline was issued setting a January 31, 2023 deadline for the claimants to file documentation resolving the issue remark. Nothing was filed by Frederick W. Amborn III and Mary K. Amborn. The copy of the Order mailed to Bernadine L. Gerfen was returned. Research by the Montana Water Court Clerk of Court shows that Ms. Gerfen is deceased. The Montana Cadastral website states Frederick W. Amborn III and Mary K. Amborn are the only owners of the claimed place of use. It appears there is no other successor to Ms. Gerfen's interest in this claimed water right.

On February 8, 2023 the Order Entering Defaults and Order Setting Deadline Pursuant To Section 85-2-248(9)(a), MCA was issued. It states:

As Frederick W. Amborn III, Mary K. Amborn, and Bernadine L. Gerfen did not comply with the November 29, 2022 Order Consolidating Case And Setting Filing Deadline, pursuant to Rule 55(a), M.R.Civ.P. and Rule 22, W.R.Adj.R., it is ORDERED that the defaults of Frederick W. Amborn III, Mary K. Amborn, and Bernadine L. Gerfen are ENTERED.

This claim appeared in the Preliminary Decree with the following issue remark:

NO VOLUME HAS BEEN CLAIMED. THE VOLUME GUIDELINE FOR THIS PURPOSE IS 14 ACRE-FEET PER YEAR.

As this issue remark will not be addressed and resolved through the objection process, the Legislature has directed the Water Court to resolve issue remarks using the procedures set forth in section 85-2-248, MCA.

Under Section 85-2-248(3), MCA, information in the claim file or other information obtained by the Court can be reviewed to determine if it provides a sufficient basis to resolve the issue raised by a remark and the Court can provide the claimants an opportunity to file additional information or evidence. It appears the volume should be 14.00 ACRE FEET. Pursuant to 85-2-248(9)(a), MCA, it is

ORDERED that the deadline for the claimants to show cause in writing why the Court should not proceed with amending claim 43B 30115925 as described above pursuant to section 85-2-248(9)(a), MCA, is **March 10, 2023**. If no additional information is filed by this deadline, the Court will proceed with amending the claim as detailed above.

Nothing was filed. These documents are viewable in the Court's FullCourt Enterprise case management system.

#### APPLICABLE LAW

"All issue remarks to claims that are not resolved through the filing of an objection as provided in 85-2-233 must be resolved as provided in this section." Section 85-2-248(2), MCA.

A properly filed Statement of Claim for Existing Water Right is prima facie proof of its content pursuant to section 85-2-227, MCA. This prima facie proof may be contradicted and overcome by other evidence that proves, by a preponderance of the evidence, that the elements of the claim do not accurately reflect the beneficial use of the water right as it existed prior to July 1, 1973. This is the burden of proof for every assertion that a claim is incorrect including for claimants objecting to their own claims. Rule 19, W.R.Adj.R.

#### FINDINGS OF FACT

1. The Preliminary Decree does not include a volume quantification. The volume should be 14.00 AC-FT. The issue remark should be removed as resolved.
2. The Preliminary Decree also includes the following notice remark:

THIS EXEMPT CLAIM WAS FILED ON 10/30/2017. THIS CLAIM NUMBER WAS NOT INCLUDED IN THE BASIN 43B DECREE ISSUED 01/16/1985.

This remark should be removed as having served its notice purpose.

#### CONCLUSION OF LAW

The Statement of Claim is sufficient to resolve the issue remark without evidentiary hearing. Sections 85-2-248(3) and (9), MCA.

#### RECOMMENDATIONS

Based upon the above Findings of Fact and Conclusion of Law, this Master recommends that the Court make the changes specified in the Findings of Fact to correct the Preliminary Decree for this Basin. A Post Decree Abstract of Water Right Claim is served with this Report to confirm the recommended changes have been made in the state's centralized record system.

#### **ELECTRONICALLY SIGNED AND DATED BELOW**

**Service via USPS Mail:**

Frederick W. Amborn III  
Mary K. Amborn  
3 Shamrock Ln  
Livingston, MT 59047

Bernadine L. Gerfen  
(Return mail received)

**POST DECREE**  
**ABSTRACT OF WATER RIGHT CLAIM**  
**YELLOWSTONE RIVER, ABOVE & INCLUDING BRIDGER CREEK**  
**BASIN 43B**

**Water Right Number:** 43B 30115925 STATEMENT OF CLAIM

**Version:** 2 -- POST DECREE

**Status:** ACTIVE

**Owners:**

BERNADINE L GERFEN

PO BOX 1371

LIVINGSTON, MT 59047

FREDERICK W AMBORN III

3 SHAMROCK LN

LIVINGSTON, MT 59047 4106

MARY K AMBORN

3 SHAMROCK LN

LIVINGSTON, MT 59047 4106

**Priority Date:** DECEMBER 31, 1955

**Type of Historical Right:** USE

**Purpose (use):** DOMESTIC

**Flow Rate:** 30.00 GPM

**Volume:** 14.00 AC-FT

**Households:** 1

**Maximum Acres:** 5.00

**Source Name:** GROUNDWATER

**Source Type:** GROUNDWATER

**Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SESWSE	26	2S	9E	PARK

**Period of Diversion:** JANUARY 1 TO DECEMBER 31

**Diversion Means:** WELL

**Subdivision:** ACREVILLE SUBD TRACT/LOT: 7-9

**Period of Use:** JANUARY 1 TO DECEMBER 31

**Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			SESWSE	26	2S	9E	PARK